

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**JUN 11 1994**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Part 22 of the	)	CC Docket No. 94-46
Commission's Rules to Delete	)	
Section 22.119 and Permit the	)	
Concurrent Use of Transmitters in	)	
Common Carrier and Non-Common	)	
Carrier Services	)	

**COMMENTS OF GTE**

GTE Service Corporation on behalf of its affiliated domestic telephone, equipment, and service companies ("GTE") hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") proposing to delete section 22.119 of the Commission's Rules.<sup>1</sup> That section prohibits common carriers holding licenses for transmitters under Part 22 of the Commission's rules from concurrently using such transmitters for non-common carrier communication purposes.<sup>2</sup>

**INTRODUCTION AND SUMMARY**

In the NPRM, the Commission proposes to delete section 22.119 in order to permit common carriers to concurrently license and use transmitters for

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<sup>1</sup> Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Services, Notice of Proposed Rulemaking, CC Docket No. 94-46, FCC 94-113 (released June 9, 1994).

<sup>2</sup> 22 C.F.R. § 22.119.

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common carrier and non-common carrier purposes.<sup>3</sup> The Commission seeks comment on that proposal. The Commission also seeks comment on several other issues, including: whether section 22.119 should be retained but modified to permit the concurrent use of transmitters in the common carrier and non-common carrier services in limited circumstances; whether any circumstances exist in which the Commission should not permit the shared use of any transmitter licensed under Part 22; and whether any additional safeguards would be necessary should the Commission delete section 22.119.<sup>4</sup>

GTE wholeheartedly supports the Commission's proposal to eliminate the restriction set forth in section 22.119 of the Commission's Rules. For most common carriers holding Part 22 transmitter licenses, no additional safeguards are necessary. GTE believes, however, that concurrent with the elimination of section 22.119, certain safeguards are necessary for non-exclusive use services such as air-ground service. GTE submits that no additional safeguards are necessary to prevent warehousing of exclusively assigned frequencies.

#### DISCUSSION

GTE strongly supports the Commission's proposal to allow common carriers holding part 22 licenses to use their transmitters to provide both common carrier and non-common carrier services. GTE agrees with the Commission that prohibiting common carriers from using their Part 22-licensed transmitters to

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<sup>3</sup> NPRM at 1-2.

<sup>4</sup> Id. at 2-3.

provide non-common carrier services is no longer necessary. The restriction was adopted to ensure that the capacity of common carrier mobile service networks is not limited by allowing some capacity to be used to provide non-common carrier services, and to ensure that customers of common carrier mobile services will not suffer unnecessary delays or service interruptions.<sup>5</sup>

As the Commission noted in its NPRM, however, developments in the mobile communications industry have rendered the 22.119 restriction no longer necessary. In particular, technological advances have increased transmitter capacity. At the same time, spectrum allocation has increased, barriers to entry have been relaxed, and competition has increased.<sup>6</sup> The result of these developments has been to ensure that, today, allowing common carriers to use their transmitters to provide non-common carrier services in addition to the common carrier services for which they were licensed will not result in diminished capacity, unnecessary delays, or service interruptions in the common carrier services.

Allowing common carriers to provide common and private carrier services using Part 22-licensed transmitters will serve the public interest. Under the current rule, common carriers wishing to provide private carrier mobile services are required to construct separate facilities for the private carriage services. Thus, the current rule does not allow common carriers with excess transmitter

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<sup>5</sup> See Id. at 1.

<sup>6</sup> Id. at 2.

capacity to enjoy the cost savings that would result from using that capacity to provide private carrier services. As a result, the costs of providing both common carrier and private carrier services are artificially higher. Eliminating section 22.119 will also benefit the environment by requiring fewer transmitters and transmitter locations.

Given these developments and public interest considerations, GTE believes that the section 22.119 restriction is no longer necessary. GTE believes, however, that the public interest requires that some restrictions be placed on the use of transmitters that provide both common carrier and non-common carrier services. Specifically, GTE believes that the Commission should adopt certain safeguards that apply to common carrier providers of shared frequency mobile services such as air-ground service.

Services using exclusive spectrum assignment differ greatly from services that require providers to share the available frequency with other providers. For exclusive use services like paging, capacity, and the extent to which any additional capacity exists, is under the exclusive control of a single licensee. By contrast, the frequencies available for air-ground service are shared by all common carrier providers of air-ground service on a first-come, first-served basis. Thus, use of the available frequencies by any air-ground service provider for non-common carrier services is not within the control of any single party. Moreover, exclusive use service providers may offer national or regional private carriage services as an overlay to their local common carrier services. Air-ground service, however, is required to be a national service.

GTE is concerned that when multiple entities use their transmitters over shared frequencies, non-common carrier usage of a transmitter or transmitters can limit the capability of other entities who share the frequency. As noted above, air-ground providers like GTE Airfone use shared rather than exclusive use frequencies to transmit messages. If air-ground service providers are allowed unrestricted use of shared frequencies to provide non-common carrier service in addition to common carrier air-ground service, there is a distinct possibility that network capacity available for common carrier services will be limited due to the increased use of shared frequencies. As a result, air-ground customers could suffer service delays or interruptions. Thus, in spite of the fact that technological advances have increased air-ground transceiver capacity, network capacity may be constrained by overuse of shared frequencies.

Accordingly, although GTE believes the Commission should delete section 22.119 for all carriers, it urges the Commission to adopt safeguards to protect the ability of shared frequency service providers to continue to provide high quality common carrier services. Specifically, GTE requests that the Commission adopt a rule which provides that common carrier and private carrier services may only be provided in shared use services through the use of the same transmitter if: (1) such provision is done by the same party in both instances; and (2) the private carrier services either are provided without affecting frequency availability, or are not provided when the saturation level of available frequencies at any given location is greater than 80 percent.

This rule will allow shared frequency service providers to provide common carrier and private carrier services from transmitter locations, but would limit carriers' ability to provide private carrier services. Private carriage services would only be available on a secondary use basis when common carrier service use is low or would not be affected. This rule would also be easy to implement. Providers of air-ground service are required by the Commission to use scanners to monitor channel availability. These scanners would enable all air-ground service providers to track frequency saturation and to abide by the rule GTE endorses.<sup>7</sup>

Finally, should the Commission decide to eliminate section 22.119 as GTE recommends to allow common carriers to use their transmitters to provide common carrier and non-common carrier services, GTE does not believe that any additional safeguards are necessary to prevent warehousing of exclusively assigned frequencies. Warehousing concerns are already addressed in the licensing requirements for each mobile service. No additional regulations are required.

**In summary:** GTE strongly supports the Commission's proposal to allow common carriers holding part 22 licenses to use their transmitters to provide both common carrier and non-common carrier services. GTE urges the Commission, however, to adopt safeguards to protect the ability of shared frequency service providers to provide common carrier services over the available frequencies.

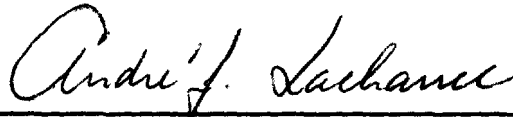
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<sup>7</sup> These scanners do not, however, enable carriers to determine the type of traffic (common or private carriage) that is being carried over the shared frequencies.

Finally, GTE submits that no additional regulations are needed to prevent warehousing of exclusively assigned frequencies.

Respectfully submitted,

GTE Service Corporation and its affiliated  
domestic telephone, equipment, and service  
companies

A handwritten signature in cursive script, reading "Andre J. Lachance". The signature is written in dark ink and is positioned above a horizontal line.

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Their Attorney